

The proposed amendment is as follows:

In § 966.306 (33 F.R. 16330, 17310, 19161; 34 F.R. 128, 6326, 7135), paragraphs (a) and (b) are hereby amended to read as follows:

§ 966.306 Limitation of shipments.

(a) *Minimum grade, size, and maturity requirements.* No person shall handle any lot of tomatoes for shipment outside the regulation area unless they meet the following minimum requirements:

(1) For mature green tomatoes: U.S. No. 3 or better grade, over $2\frac{1}{32}$ inches in diameter.

(2) For all other tomatoes: U.S. No. 3, or better grade, over $2\frac{1}{32}$ inches in diameter.

(3) Not more than 10 percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter.

(b) *Size classifications.* (1) No person shall handle for shipment outside the regulation area any tomatoes unless they are sized within one or more of the following ranges of diameters (expressed in terms of minimum and maximum). Measurement of minimum and maximum diameter shall be in accordance with the method prescribed in paragraph (c) of § 51.1860 of U.S. Standards for Grades of Fresh Tomatoes (§§ 51.1855 to 51.1877 of this title).

Size classification:	Diameter (inches)
6 x 7-----	Over $2\frac{1}{32}$ to $2\frac{1}{16}$, inclusive.
6 x 6-----	Over $2\frac{1}{32}$ to $2\frac{1}{32}$, inclusive.
5 x 6-----	Over $2\frac{1}{32}$.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: April 29, 1969.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable
Division, Consumer and Mar-
keting Service.

[F.R. Doc. 69-5274; Filed, Apr. 30, 1969;
8:51 a.m.]

[7 CFR Parts 1003, 1004, 1016]

[Dockets Nos. AO-293-A21, AO-160-A41,
AO-312-A18]

MILK IN WASHINGTON, D.C., DELA-
WARE VALLEY, AND UPPER CHESA-
PEAKE BAY MARKETING AREAS

Notice of Hearing on Proposed
Amendments to Tentative Market-
ing Agreements and Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Academy Room, Emerson Hotel, Baltimore and Calvert Streets, Baltimore, Md., beginning at 9:30 a.m., on May 27, 1969, with respect to pro-

posed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the Washington, D.C., Delaware Valley, and Upper Chesapeake Bay marketing areas.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

It is possible that the marketing service programs currently in effect under the Upper Chesapeake Bay and Washington, D.C., orders could duplicate to some degree, informational services under the proposed cooperative payment program. As to the Delaware Valley order, proposals included in this notice relate to both marketing service and cooperative payment programs. Accordingly, notice is hereby given that, with regard to each of the respective orders, the hearing is open for consideration of the following: (1) provision for a marketing service program only; (2) provision for a cooperative payment program only; and (3) provision for both marketing service and cooperative payment programs.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Pennmarva Dairymen's Cooperative Federation, Inc.:

Proposal No. 1. Amend Federal Orders 3, 4, and 16 by adding the following provisions to establish a system of cooperative payments:

§ ----- Cooperative payments for
marketwide services.

Payments shall be made to qualified cooperatives or to federations under the conditions, in the manner, and at the rates set forth in this section.

(a) *Definitions.* As used in this section the following terms shall have the following meanings:

(1) "Cooperative" means a cooperative association of producers which is duly incorporated under the cooperative corporation laws of a State; is qualified under the Capper-Volstead Act (7 U.S.C. 291 et seq.); has all its activities under the control of its members; and has full authority in the sale of its members' milk.

(2) "Federation" means a federation of cooperatives which is duly incorporated under the laws of a State.

(3) "Federated cooperative" means a cooperative which is a member of a federation and on whose membership the federation is an applicant for or receives payments under subparagraph (2) of paragraph (f) of this section.

(4) "Affiliated cooperative" means a cooperative upon whose entire membership another cooperative, by mutual consent, is an applicant for or receives payments under subparagraph (2) of paragraph (f) of this section.

(5) "Member producer" means, when used with respect to a cooperative or federation which is an applicant for or is receiving payments, a producer under

this order who has met the following conditions:

(i) He is a member of the cooperative or one of its affiliated cooperatives, or in the case of a federation, he is a member of one of its federated cooperatives from whom the cooperative, affiliated cooperative, or federated cooperative is receiving at least 4 cents per hundredweight of milk delivered by him: *Provided*, That the cooperative of which he is a member is meeting the requirements of this part applicable to it;

(ii) He has been a producer, or his farm had been the farm of a producer for at least a prior 12-month period; and

(iii) He has not for a prior 12-month period been a member producer of another cooperative or federation.

(6) "Marketwide services" means services performed by cooperatives or federations, as defined herein, which benefit all producers in the marketing of their milk under this order; such services are not limited to those specified in subparagraphs (1) through (6) of paragraph (e) of this section and may include services directly or indirectly related to the order.

(b) *Designated cooperatives and federations.* A cooperative or federation may submit an application to the market administrator for payments under the provisions of this section or for modification of the basis of a previous designation. In accordance with the requirements of the rules and regulations issued by the market administrator, such application shall include a written description of the applicant's program for the performance of marketwide services, including evidence that adequate facilities and personnel will be maintained by it so as to enable it to perform the marketwide services; and the application shall contain a statement by the applicant that it will perform the required marketwide services for which it is applying for payments: *Provided*, That in the case of an application for modification of the basis for a previous designation of the market administrator may waive the requirements for submission of the written description of the programs. The application shall set forth all necessary data so as to enable the market administrator to determine whether it meets the designation requirements with respect to the payments for which the application is submitted. An application shall be approved by the market administrator only if he determines that:

(1) In the case of a cooperative;

(i) It has as member producers or its affiliated cooperatives have as member producers, not less than 15 percent of all producers, as defined in this order.

(ii) It has contracts with each of its affiliated cooperatives under which the cooperatives agree to continue as affiliated cooperatives for at least 1 year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which member producers of the affiliated cooperative are to be included within its membership for cooperative payment purposes;

(iii) It receives from each of its affiliated cooperatives not less than 4 cents

per hundredweight of milk delivered by member producers of such cooperatives.

(2) In the case of a federation:

(i) It has contracts with each of its federated cooperatives under which the cooperatives agree to remain in the federation for at least 1 year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which the federated cooperatives are to be included within the membership of the federation for cooperative payment purposes;

(ii) It has as member producers not less than 15 percent of all producers, as defined in this order.

(iii) It receives from each of its federated cooperatives not less than 1 cent per hundredweight of milk delivered by member producers of such cooperative.

(3) The applicant cooperative or federation demonstrates that it has the ability to perform the marketwide services for which application is made, and that such services will be performed.

(4) The applicant cooperative or the federated cooperatives of an applicant federation are in no way precluded from arranging for the utilization of milk under their respective control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(c) *Notice of designation or denial; effective date.* Upon determination by the market administrator that a cooperative or a federation shall be designated to receive payment for performance of the marketwide services he shall transmit such determination to the applicant cooperative or federation and publicly announce the issuance of the determination. The determination shall be effective with respect to milk delivered on and after the first day of the month following issuance of the determination. If, after consideration of an application for payments for marketwide services, the market administrator determines that the cooperative or federation is not qualified to receive such payments he shall promptly notify the applicant and specifically set forth in such notice his reasons for denial of the application.

(d) *Requirements for continued designation.* From time to time and in accordance with the rules and regulations which may be issued by the market administrator, each designated cooperative or federation must demonstrate to the market administrator that it continues to meet the designation requirements for the payments and is fully performing the marketwide services for which it is being paid.

(e) *Marketwide services.* Each cooperative or federation shall perform the marketwide services enumerated in this paragraph. Such services shall include: (1) Analyzing milk marketing problems and their solutions, conducting market research and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of all such data; (2) determining the need for the formulation of amendments to the order and proposing such amend-

ments or requesting other appropriate action by the Secretary or the market administrator in the light of changing conditions; (3) participating in proceedings with respect to amendments to the order, including the preparation and presentation of evidence at public hearings, the submission of appropriate briefs and exceptions, and also participating by voting or otherwise, in the referendum relative to amendments; (4) participating in the meetings called by the market administrator, such as meetings with respect to rules and regulations issued under the order, including activities such as the preparation and presentation of data at such meetings and briefs for submission thereafter; (5) conducting a comprehensive education program among producers—i.e., members and nonmembers of cooperatives—and keeping such producers well informed for participating in the activities under the regulatory order and, as a part of such program, issuing publications that contain relevant data and information about the order and its operation, and the distribution of such publications to members and, on the same subscription basis, to nonmembers who request it, and holding meetings at which members and nonmembers may attend; (6) engaging in the handling, selling, and hauling of milk of members and/or nonmembers; and (7) performing such other services as are needed to maintain satisfactory marketing conditions and promote market stability.

(f) *Rate, computation, time, and method of payment.* (1) Subject to the provisions of paragraph (g) of this section, the market administrator, on or before the 20th day of each month, shall make payment out of the producer-settlement fund, or issue equivalent credit therefore, to each cooperative or federation which is designated for such payments for marketwide services. The payment to a cooperative or federation shall be based upon the milk reported by cooperative or proprietary handlers to have been received during the preceding month from its member producers, subject to adjustment upon verification by the market administrator.

(2) Such payment or credit shall be at the rate of 4 cents per hundredweight of milk in accordance with subparagraph (1) of this paragraph.

(3) If an individually designated cooperative is affiliated with a federation, the cooperative payment shall be made to such cooperative unless its contract with the federation specified in writing that the federation is to receive the payments. Any such contract must authorize the federation to receive the payments for at least 1 year, and such agreement must cover or be renewed for a yearly period for every subsequent year for which the federation is to receive the payments.

(g) *Cancellation of designation.* (1) The market administrator shall issue an order wholly or partly canceling the designation of a previously designated cooperative or federation for payments authorized pursuant to this section and

such payments shall not thereafter be made to it if he determines that:

(i) The cooperative or federation no longer complies with the requirements of this part: *Provided*, That if one of its affiliated or federated cooperatives has failed to comply with the requirements of this part applicable to it, the cooperative or federation shall be disqualified only to the extent that its qualification for payments or the amount of its payments are based upon the membership, milk or operations of such noncomplying affiliated or federated cooperatives.

(ii) The cooperative or federation has failed to make reports or furnish records pursuant to this section or pursuant to rules and regulations issued by the market administrator.

(2) An order of the market administrator wholly or partly canceling the designation of a cooperative or federation shall not be issued until after the cooperative or federation has had opportunity for hearing thereon following not less than 15 days' notice to it specifying the reasons for the proposed cancellation. If the cooperative or federation fails to file a written request for hearing with the market administrator within such period of 15 days, the market administrator may issue an order of cancellation without further notice; but if within such period a request for hearing is filed, the market administrator shall promptly proceed to hold such hearing pursuant to rules and regulations issued by him under paragraph (1) of this section.

(3) A cancellation order issued by the market administrator shall set forth the findings and conclusions on the basis of which it is issued.

(h) *Appeals.*—(1) *From denials of application.* Any cooperative or federation whose application for designation has been denied by the market administrator may, within 30 days after notice of such denial, file with the Secretary a written petition for review. But the failure to file such petition shall not bar the cooperative or federation from again applying to the market administrator for designation.

(2) *From cancellation orders.* A cancellation order by the market administrator shall become final 30 days after its service on the cooperative or federation unless within such 30-day period the cooperative or federation files a written petition with the Secretary for review thereof. If such petition for review is filed, payments for which the cooperative or federation has been cancelled by the order shall be held in reserve by the market administrator pending ruling of the Secretary, after which the sums so held in reserve shall either be returned to the producer-settlement fund or paid over to the cooperative or federation depending on the Secretary's ruling on the petition. If such petition for review is not filed, any payments which otherwise would be made within the 30-day period following issuance of the cancellation order shall be held in reserve until such order becomes final and shall then be returned to the producer-settlement funds.

(3) *Record on appeal.* If an appeal is taken under subparagraph (1) or subparagraph (2) of this paragraph, the market administrator shall promptly certify to the Secretary the ruling or order appealed from the evidence upon which it was issued: *Provided*, That if a hearing was held the complete record thereof, including the applications, petitions, and all exhibits or other documentary material submitted in evidence shall be the record so certified. Such certified material shall constitute the sole record upon which the appeal shall be decided by the Secretary.

(i) *Regulations.* The market administrator is authorized to issue regulations and amendments thereto to effectuate the provisions of this section and to facilitate and implement the administration of its provisions. Such regulations shall be issued in accordance with the following procedure:

(1) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator, at which all interested persons shall have opportunity to be heard. Not less than 5 days prior to the meeting, notice thereof and of the proposed regulations or amendments shall be published in the *FEDERAL REGISTER* and mailed to qualified cooperatives and federations. A stenographic record shall be made at such meetings which shall be public information and be available for inspection at the office of the market administrator.

(2) A period of at least 5 days after the meeting shall be allowed for the filing of briefs.

(3) All regulations and amendments thereto issued by the market administrator pursuant to this section must be submitted in tentative form to the Secretary for approval, shall not be effective without such approval, and shall be published in the *FEDERAL REGISTER* following such approval. The regulations or amendments in tentative form shall be forwarded also to cooperatives and federations designated under this section and to other persons upon request in writing. The Secretary shall either approve the regulations or amendments thereto submitted by the market administrator or direct the market administrator to reconsider the tentative rules or amendments. In the event the market administrator is directed to give reconsideration to the matter, the market administrator shall either issue revised tentative regulations or amendments or call another meeting pursuant to this section for additional consideration of the rules or amendments.

(j) *Reports and records.* Each designated cooperative or federation shall, in accordance with rules and regulations issued by the market administrator:

(1) After submission to the market administrator for verification, make a public report of its performance of marketwide services pursuant to this section, including data on its receipts and expenditure of cooperative payments funds and a description of the marketwide services performed. The report shall contain a certification by the market adminis-

trator that the report is, to the best of his knowledge, accurate and in accordance with the rules and regulations which he has established.

(2) Submit an annual report to the market administrator which shall include:

(i) A concise report of its performance of marketwide services and allocations of expenditures to such performance for the previous year; and

(ii) An outline of its proposed program and budget for performance of marketwide services for the coming year.

(3) Make such additional reports to the market administrator as may be requested by him for the administration of the provisions of this section.

(4) Maintain and make available to the market administrator or his representative such records as will enable the market administrator to verify such reports.

(k) *Notices, demands, orders, etc.* All notices, demands, orders, or other papers required by this section to be given to or served upon a cooperative or federation shall be deemed to have been given or served as of the time when mailed to the last known secretary of the cooperative or federation at his last known address.

Proposed by Eastern Milk Producers Cooperative Association, Inc.:

Proposal No. 2. Amend Order No. 4 by adding a new section providing for market service deductions from nonmembers of associations of producers as follows:

(a) In making the payments required by § 1004.80 for producer milk, other than milk delivered by himself and any producer who is a member of a cooperative association which the Secretary determines is performing the services specified in paragraph (b) of this section, each handler shall deduct three cents per hundredweight, or such lesser amount as the Secretary shall determine to be sufficient, for marketing services. The handler shall pay the amount deducted to the market administrator on or before the 19th day after the end of the month.

(b) The market administrator shall expend amounts received under paragraph (a) of this section only in providing market information to the producers who delivered the milk which was subject to such deduction and for verification of weights, samples, and tests of milk received by handlers from them. The market administrator may contract with a cooperative association for the furnishing of the whole or any part of these services.

(c) Each handler in making the payments required by § 1004.80 for producer milk delivered by members of a cooperative association which the Secretary determines is performing the services specified in paragraph (b) of this section shall deduct from such payments, in lieu of the deductions specified in paragraph (a) of this section, an amount authorized by such producers. He shall pay the amount deducted to the association on or before the 20th day after the end of the month accompanied by a statement showing the pounds of milk

received from each producer from whom the deduction was made.

Proposed by Pennmarva Dairymen's Cooperative Federation, Inc.:

Proposal No. 3. Modify proposal No. 2 by providing a 5-cent rate of deduction in place of the 3-cent rate of deduction specified in paragraph (a) of such proposal.

Proposed by the Dairy Division, Consumer and Marketing Service:

Proposal No. 4. Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and order may be procured from the Market Administrators: 710 South Washington Street, Alexandria, Va. 22313; 20 East Susquehanna Avenue, Baltimore, Md. 21204; 1 Decker Square, Room 646, Bala Cynwyd, Pa. 19004, or from the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

Signed at Washington, D.C., on April 25, 1959.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[P.R. Doc. 89-5191; Filed, Apr. 30, 1959; 8:48 a.m.]

[7 CFR Part 1013]

[Docket No. AO-286-A14]

MILK IN SOUTHEASTERN FLORIDA MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Southeastern Florida marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the *FEDERAL REGISTER*. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which this decision is formulated was conducted at Fort Lauderdale, Fla., on January 9-11, 1958, pursuant to notice thereof which was issued December 29, 1957 (33 F.R. 78).

The material issue on the record of the hearing relates to the adoption of a Class I base plan.

Findings and conclusions. The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

The Southeastern Florida order should not be amended to provide for a Class I base plan.

The order now provides for the distribution of total returns from producer milk through the payment of a uniform price, which is the same for each producer for all his milk. Independent Dairy Farmers' Association (IDFA) proposes that such returns be distributed through a Class I base plan under which producers would receive approximately the Class I price for their "base" deliveries and approximately the Class III price for deliveries in excess of their base. Under their plan, a producer's base would reflect his proportionate share of the Class I sales in the market based on his deliveries relative to the total producer milk pooled during a representative period.

IDFA represents 74 of the 88 producers under the order and markets 75 to 80 percent of the total producer milk. As the marketing agent for its members, IDFA assumes the role of balancing milk supplies, both on a seasonal and day-to-day basis, with the fluid milk requirements of handlers. This entails importing milk into the market when local supplies are short and disposing of supplies that are in excess of handlers' needs.

Since 1961, IDFA has operated a type of Class I base plan outside the order to encourage members to adjust their production to the needs of the market. The institution of their plan followed the removal from the order of a seasonal base-excess plan, which was considered to have stimulated excessive production because of a "race for base" by producers. IDFA claims that its plan places members at an economic disadvantage compared to other producers on the market, since the plan applies only to its members.

It points out that the other producers, being outside the plan, receive for all their milk the order uniform price, which in 1968 averaged \$6.96.¹ When these producers increase their production, they receive the uniform price on the additional milk also. Its members, IDFA indicates, do not. Although IDFA receives for its members the order uniform price for all their milk, these returns are redistributed to the members through their Class I base plan. Members receive approximately the Class I price for base milk and approximately the Class III price for milk exceeding their base, IDFA stated. Under the order, Class I and Class III prices averaged \$7.31 and \$4.32, respectively, in 1968. IDFA stresses that any additional production by a member

already producing his base returns to him only the lower price. It is this difference—approximately \$2.64 in 1968—in returns to members and to other producers for additional milk production, IDFA argues, that results in the economic disadvantage to members.

IDFA states that if a Class I base plan is not incorporated in the order it may be forced to abandon its present base plan. It considers the use of a Class I base plan essential, however, to the orderly balancing of milk supplies with demand in this market and urges the adoption of such a plan under the order.

The 14 producers in the market who are not IDFA members oppose a Class I base plan. Of these 14 producers, 10 are members of Home Milk Producers Association (HMPA), a cooperative which bottles milk and manufactures cottage cheese and ice cream at its own plant. The four remaining Southeastern Florida producers are corporate farms owned and operated by the same person. He and an HMPA member testified concerning their operations.

Production in December 1964 through March 1965 of the HMPA member who testified was 4.4 million pounds. In 1967, he expanded his production facilities by an investment of \$160,000 in additional land and cows. He estimated that due primarily to the expansion, his December 1967–March 1968 production would be about 5.7 million pounds, an increase of 30 percent over the comparable 1964–65 period. The increase in production by all Southeastern Florida producers during this period was 11 percent.

The owner of the four corporate farms relocated one farm operation in June 1967, involving an investment of more than \$900,000 in land, new buildings and equipment, and 450 additional cows. With the new facility in operation, total production on the four farms in October 1967 was 5 million pounds, 35 percent more than their October 1965 production of 3.7 million pounds. Total production of all other Southeastern Florida producers increased 8 percent in the same 2-year period.

Production increases such as these have been of particular concern to IDFA which points out that although it represents 74 of the 88 producers on the market it has, nevertheless, no control over the production of the other 14 Southeastern Florida producers. It argues that the efforts of its members, in operating under a base plan to tailor production to the market's Class I requirements, can be substantially nullified by the increased production of the other producers.

Handlers oppose a Class I base plan for the order. They argue that the basic purpose of such plans is to reduce surpluses and that the Southeastern Florida market has no surplus. The handlers note that the market's Class I utilization of producer milk, which averaged 87 percent for the past 6 years, is among the highest in the country; and that another 5 to 8 percent of the producer milk is used in Class II products. Moreover, handlers argue, a reserve supply of

milk—IDFA recommended an amount equal to 12 percent of the Class I sales in the market—is necessary to assure an adequate milk supply for handlers at all times.

Producer receipts under the order in 1968 were 571 million pounds, 13 percent more than the 507 million pounds in 1963. Producer milk used in Class I, which increased 12 percent during this 6-year period, totaled 496 million pounds in 1968, compared with 442 million pounds in 1963. The Class I utilization of producer milk during the past 6 years has approximated 87 percent annually, as shown in the following table.

Year	Producer receipts (Million pounds)	Producer milk in Class I (Million pounds)	Percentage of producer milk in Class I (Percent)
1963.....	507	442	87.3
1964.....	511	445	87.2
1965.....	530	462	87.2
1966.....	535	468	87.6
1967.....	568	491	86.4
1968.....	571	496	86.9

Although milk production for the Southeastern Florida market has increased, Class I sales have likewise increased. Despite relatively large production increases by some producers, there has been no significant change in the relationship between production for the market and Class I sales. In the past 6 years, the market reserve averaged only 13 percent of producer deliveries. Such a reserve, as the proponent cooperative indicates, is, in fact, needed to assure handlers of an adequate supply of milk for Class I use.

Historically, deliveries of Southeastern Florida producers have not always been adequate to meet the market's Class I needs and milk must be obtained from outside sources. In September through December 1968, handlers imported 6 million pounds of milk. Total imports in 1968 were 8.9 million pounds. In 1967, 1.6 million pounds were imported.

The Food and Agriculture Act of 1965 provided the authority to include Class I base plans in Federal orders. The proposal for a Class I base plan must be considered in relation to the basic purposes of the authorizing statute. The statement of purposes in the statute and the legislative history of the Class I base plan provisions in the statute make it abundantly clear that a principal purpose of the 1965 Act is to reduce surplus milk production. We conclude that there is no milk surplus in the Southeastern Florida market beyond the normal requirement of any market for a minimum reserve to meet daily and weekly fluctuations in sales. Accordingly, the inclusion of a Class I base plan in the Southeastern Florida order is denied at this time.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent

¹ Official notice is taken of the Southeastern Florida order monthly statistical releases issued after the close of the hearing which provide market data for 1967 and 1968 that were not available at the time of the hearing.

that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

In accordance with § 900.9(b) of the general regulations with respect to marketing agreements and orders (7 CFR Part 900), an interested party requested in his brief a reversal of the Presiding Officer's denial of a motion for a continuance of the hearing. The party contended that although the legal requirements for notice were met the notice of hearing provided insufficient time to prepare evidence for the hearing. A continuance of the hearing was asked so that certain statistical data could be prepared and presented for inclusion in the record.

The notice for this hearing, which convened on January 9, 1968, was published on January 4, 1968. This provided more than the minimum 3-day notice required by § 900.4(a) of the general regulations. Such notice is considered to be reasonable in the circumstances. The Presiding Officer's ruling on this motion is affirmed.

Signed at Washington, D.C., on April 25, 1969.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 69-5190; Filed, Apr. 30, 1969;
8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 121.]

[Docket No. 9548; Notice 69-18]

PROVISION FOR DEVIATIONS FROM QUALIFICATIONS REQUIREMENTS FOR CHIEF PILOTS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending § 121.61 of the Federal Aviation Regulations to provide for grants of deviation from the 3 years pilot in command experience requirement for a chief pilot in those cases where the Administrator finds that the applicant's aeronautical experience is equivalent to 3 years of experience as a pilot in command of a large aircraft with an air carrier or a commercial operator.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Office of the General Counsel, Federal Aviation Administration, Department of Transportation, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before June 30, 1969, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

The qualification requirements of § 121.61 for management personnel of Part 121 air carrier and commercial operators were adopted to assure a high level of supervisory management competence. To achieve this purpose, the chief pilot experience requirements were adopted to insure that a pilot would be thoroughly familiar through experience of a pilot in command with the flight operations of an air carrier or a commercial operator before he assumes his responsibilities as a chief pilot.

In several instances in the past, however, the FAA has granted exemptions to persons requesting approval to serve as chief pilots where it has been shown that these persons have sufficient aeronautical managerial experience to fulfill the purpose of the regulation even though such persons did not have the required pilot in command experience. This proposed rule provides that in such cases a deviation could be granted by the Administrator.

In consideration of the foregoing, it is proposed to amend § 121.61(b) (2) to read as follows:

§ 121.61 Management personnel: qualifications.

(b) * * *

(2) Has had at least 3 years of experience as pilot in command of a large aircraft with an air carrier or commercial operator. However, the Administrator may grant a deviation from the requirement of this subparagraph if he finds that the person has had equivalent aeronautical experience; and

(Secs. 313(a), 601, 604, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1424; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on April 24, 1969.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

[F.R. Doc. 69-5185; Filed, Apr. 30, 1969;
8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 230, 239.]

[Releases Nos. 33-4960, IC-5650]

RULES, REGULATIONS, AND FORMS UNDER SECURITIES ACT OF 1933

Proposed Amendments to Rules and Adoption of Summary Sheets for Registration Statements

Notice is hereby given that the Securities and Exchange Commission has under consideration proposed amendments to all of its forms for the registration of securities under the Securities Act of 1933 ("Act"), and proposed amendments to Rules 402, 404, and 472 under the Act.

Forms C-2, C-3, D-1, D-1A, S-1, S-2, S-3, and S-7 through S-14 (§§ 239.4, 239.5, 239.6, 239.7, 239.11, 239.12, 239.13, 239.16b, 239.17, 239.18, 239.19, 239.22, 239.23, 239.24, and 239.26 of this chapter) are prescribed for registration under the Act of securities of companies other than investment companies, with the exception noted below. Form S-4 and Form S-5 (§§ 239.14, 239.15 of this chapter) are prescribed for registration under the Act of securities of closed-end and open-end management investment companies, respectively, except those which issue periodic payment plan certificates; Form S-6 (§ 239.16 of this chapter) is prescribed for the registration of securities of unit investment trusts; Form N-5 (§ 239.24 of this chapter) is prescribed for the registration of securities of small business investment companies; and Form S-1 (§ 239.11 of this chapter) is prescribed, with certain exceptions, for the registration of securities for which no other form is prescribed, including securities of management investment companies which issue periodic payment plan certificates and securities of face-amount certificate companies. Rules 402 and 472 (§§ 230.402, 230.472 of this chapter) under the Act prescribe, among other things, the number of copies of registration statements and amendments thereto which shall be filed with the Commission under the Act by every registrant. Rule 404 (§ 230.404 of this chapter) contains certain requirements for the preparation of registration statements.

The proposed amendments to the forms and rules would prescribe summary sheets to be filled in by the registrant and filed as an exhibit to each registration statement, and amendment thereto, filed under the Act for the registration of securities. The answers in the summary sheets would summarize essential information relating to the registrant and the registration statement. The information in the summary sheets will facilitate the automated

processing of data through the use of the Commission's computer; the Commission's recordkeeping, including its internal workload control; and the dissemination of information to the Commission's regional offices for public information purposes. The summary sheets, through uniform arrangement of data in abbreviated form, will eliminate the necessity for transcribing information from filings onto intermediate forms for the foregoing purposes.

The summary sheets consist of two pages which would be filled in by inserting the required data in the spaces provided. Copies of blank summary sheets could be reproduced by the registrant for this purpose or copies would be furnished by the Commission upon request.

The sheet designated "Form 835—Summary Sheet for Registration Statement, or an Amendment Thereto, Filed under the Securities Act of 1933 for the Registration of Securities of a Company Other than an Investment Company" (§ 239.41 of this chapter) would be prescribed for Forms C-2 (§ 239.4), C-3 (§ 239.5), D-1 (§ 239.6), D-1A (§ 239.7), S-1 through S-3 (§§ 239.11 through 239.13), and S-7 through S-14 (§§ 239.26, 239.16b, 239.22, 239.17, 239.18, 239.19, 239.25 and 239.23 respectively). The summary sheet designated "Form 836—Summary Sheet for Registration Statement, or an Amendment Thereto, Filed Under the Securities Act of 1933 for the Registration of Securities of an Investment Company Registered Under the Investment Company Act of 1940" (§ 239.42 of this chapter) would be prescribed for Form S-4 (closed-end companies) (§ 239.14), Form S-5 (open-end companies) (§ 239.15), Form S-6 (unit trusts) (§ 239.16), Form N-5 (small business investment companies) (§ 239.24), and Form S-1 (management company issuers of periodic payment plan certificates and face amount certificate companies) (§ 239.11). Page 1 would be completed and filed with the registration statement and with each amendment. Page 2, requiring a list of various persons related to the registrant and their relationships, would be filled out completely only in the summary sheet filed with the original filing or with the first amendment filed on or after the effective date of the form of summary sheet. Thereafter, only changes, if any, in the list of related persons set forth on page 2 would be required in summary sheets filed with amendments. A system of abbreviations is prescribed in the instructions to the summary sheet to enable the registrant to set forth the relationships in abbreviated form. Incorporation by reference to other information would not be permitted in the summary sheet in view of the necessity for a complete record in concise form to achieve the purposes described above.

The information in the summary sheets would be confined substantially to information which is presently required by the forms, except for Social Security numbers or Internal Revenue Service employer's identification numbers of related persons and the beginning

and ending dates (month and year) of the specified relationships. This information is needed for the purpose of recording multiple relationships of related persons. It would be required to be furnished if known to the registrant. However, it would be incumbent on the registrant to make all reasonable effort to obtain such information.

Paragraph (a) of Rule 402 (17 CFR 230.402(a)) and paragraph (a) of Rule 472 (17 CFR 230.472(a)) under the Act would be amended to provide that a total of 18 copies of the summary sheet be filed with every registration statement and amendment (other than amendments made by telegram or letter pursuant to Rule 473 (17 CFR 230.473)). Some copies would be kept in the Commission's principal office for the use of the staff and for public inspection. It is proposed that other copies would be placed in all regional offices of the Commission so that the information contained therein would be more readily available to interested persons, in line with the recommendations of the Commission's Special Study of Securities Markets.

The text of the proposed amendments to Rules 402, 404, and 472 and to the various forms, and copies of proposed summary sheet Forms 835 and 836 are set forth below.

The proposed amendments would be adopted pursuant to sections 7 and 19(a) of the Securities Act of 1933 and section 24(a) of the Investment Company Act of 1940. All interested persons are invited to submit views and comments with respect to the proposed amendments, which are reflected in the attached drafts of the summary sheets and proposed amendments to the rules and forms. Any such views or comments should be submitted in writing to the Securities and Exchange Commission, Washington, D.C. 20549, on or before May 2, 1969. All such communications should refer to Securities Act Release No. 4960, and they will be considered available for public inspection, except where it is requested they not be disclosed.

I. The Commission proposes to amend §§ 230.402, 230.404, and 230.472 of this chapter as follows:

§ 230.402 Number of copies; binding; signatures.

(a) Three copies of the complete registration statement, including exhibits and all other papers and documents filed as a part of the statement shall be filed with the Commission. Each copy of the registration statement so filed shall be bound, in one or more parts, without stiff covers. The binding shall be made on the side stitching margin in such manner as to leave the reading matter legible. Five additional copies of the registration statement shall be furnished for use in the examination of the registration statement but such copies need not be accompanied by any exhibits other than indentures pertaining to securities being registered, and copies of the underwriting contracts and other documents relating to the distribution of the securities.

Fifteen additional copies of the summary sheet required by paragraph (f) of § 230.404 shall also be furnished with each registration statement.

§ 230.404 Preparation of registration statement.

(f) Every registration statement and every amendment thereto, other than amendments made by telegram or letter pursuant to § 230.473, shall include as an exhibit a summary sheet of Form 835 (§ 239.41 of this chapter) or 836 (§ 239.42 of this chapter) as prescribed by the instructions to the exhibits of the appropriate form. An issuer filing pursuant to Schedule B of the Act (15 U.S.C. 77aa—Schedule B) shall include as an exhibit the summary sheet on Form 835 (§ 239.41 of this chapter).

§ 230.472 Filing of amendment; number of copies.

(a) Three copies of every amendment, other than telegraphic amendments pursuant to § 230.473, shall be filed with the Commission. Fifteen additional copies of the summary sheet required by paragraph (f) of § 230.404 shall also be furnished with each such amendment other than an amendment made by telegram or letter pursuant to § 230.473. If an amendment relates to the prospectus, a copy of the amended prospectus and of the cross reference sheet required by section 404(c) of this chapter, if amended, shall be included in each copy of the amendment filed; except that only the changed pages of the prospectus and cross reference sheet, if amended, need be included in an amendment filed pursuant to the undertaking referred to in § 230.415(a)(1).

II. Proposed forms: The Commission proposes to adopt Forms 835 and 836¹ as §§ 239.41 and 239.42 of this chapter and described as follows:

§ 239.41 Form 835, Summary sheet for registration statement or an amendment thereto, filed pursuant to Rule 404(f) (§ 230.404(f) of this chapter) under the Securities Act of 1933 for the registration of securities of a company other than an investment company.

This form shall be used as the blank fill-in form for the summary sheet required to be filed pursuant to § 230.404(f) of this chapter by each registrant thereto, filed under the Securities Act of 1933 for registration of securities of a company other than an investment company registered under the Investment Company Act of 1940. However, this form need not be filed with a delaying amendment made by telegram or letter pursuant to § 230.473 of this chapter, or with a request for withdrawal of

¹ Copies of these forms have been filed as part of this document and may be obtained from the Securities and Exchange Commission. Incorporation by reference approved by Director of Federal Register, Apr. 30, 1969.

a registration statement pursuant to § 230.477 of this chapter. In the case of a post effective amendment, the only purpose of which is to reduce the amount of securities registered to the amount sold, only items 1 through 8(b) need be completed. Exact copies of this form may be duplicated by registrants for filing purposes, or copies may be obtained from the Securities and Exchange Commission. Copies duplicated must be on good quality unglazed, white paper 8½ x 11 inches in size, with approximately ½-inch left-hand margin.

§ 239.42 Form 836, Summary sheet for registration statement or an amendment thereto, filed pursuant to Rule 404(f) (§ 230.404(f) of this chapter) under the Securities Act of 1933 for the registration of securities of an investment company registered under the Investment Company Act of 1940.

This form shall be used as the blank fill-in form for the summary sheet required to be filed pursuant to § 230.404(f) of this chapter by each registrant as an exhibit to each copy of a registration statement, and to each amendment thereto, filed under the Securities Act of 1933 for registration of securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.). However, this form need not be filed with a delaying amendment made by telegram or letter pursuant to § 230.473 of this chapter, or with a request for withdrawal of a registration statement pursuant to § 230.477 of this chapter. In the case of a post effective amendment, the only purpose of which is to reduce the amount of securities registered to the amount sold, only items 1 through 7 need be completed. Exact copies of this form may be duplicated by registrants for filing purposes, or copies may be obtained from the Securities and Exchange Commission. Copies duplicated must be on good quality unglazed, white paper 8½ x 11 inches in size with approximately five-eighths inch left-hand margin.

(Secs. 7, 19(a), 48 Stat. 78, 85, 15 U.S.C. 77g, 77s(a); sec. 24(a), 54 Stat. 825, 15 U.S.C. 80a-24)

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

APRIL 10, 1969.

[F.R. Doc. 69-5167; Filed, Apr. 30, 1969;
8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1131]

[Ex Parte No. MC-67; 98 M.C.C. 483]

MOTOR CARRIER TEMPORARY AUTHORITIES

Notice of Proposed Rule Making

APRIL 25, 1969.

Notice of petition, filed April 1, 1969, for modification of § 1131.2(c) of the temporary authorities rules.

Petitioners: American Trucking Associations, Inc., 1616 P Street, NW., Washington, D.C. 20036; Ashworth Transfer, Inc., Bell Lines, Inc., C. I. Whitten Transfer Co., Consolidated Freightways, Garrett Freightlines, Inc., McLean Trucking Co., Merchants Fast Motor Lines, Inc., Roadway Express, Smith Transfer Corp. of Staunton, Va., Southwestern Motor Transport, Inc., T.I.M.E.-D.C., Inc., Transcon Lines, Yellow Freight System, Inc., Texas-Oklahoma Express, Inc.

Petitioners representatives: Peter T. Beardsley, 1616 P Street NW., Washington, D.C. 20036; William B. Adams, 624 Pacific Building, Portland, Ore. 97204; Joseph G. Dall, Jr., Federal Bar Building, 1815 H Street NW., Washington, D.C. 20006; Wentworth E. Griffin, Suite 812, Midland Building, 1221 Baltimore, Kansas City, Mo. 64105; Harry J. Jordan, Solar Building, 1000 16th Street NW., Washington, D.C. 20036; Eugene T. Lilipfert, Suite 1100, 1660 L Street NW., Washington, D.C. 20036; Ewell H. Muse, Jr., 415 Perry Brooks Building, Austin, Tex. 78701; John M. Records, 92d and State Line, Post Office Box 8462, Kansas City, Mo. 64114; Reagan Sayers, 304 Century Life Building, Post Office Box 17007, Fort Worth, Tex. 76102; Keith E. Taylor, Kearns Building, Salt Lake City, Utah 84101; William O. Turney, 2001 Massachusetts Avenue NW., Washington, D.C. 20036.

Petitioners seek modification of the Commission's rules of practice and procedure relating to temporary authority applications under section 210a(a) of the Interstate Commerce Act, 49 CFR Part 1131, specifically § 1131.2(c) thereof, which reads in part:

Each application for temporary authority must be accompanied by a supporting statement(s) designed to establish an immediate and urgent need for service which cannot be met by existing carriers, except that when the Department of Defense is the shipper such support may be furnished directly to the Temporary Authorities Board by the Washington office of that Department. Each such shipper's statement, except those submitted by the Department of Defense must contain a certification of its accuracy and must be signed by the person (or an authorized representative thereof) having such immediate and urgent need for motor carrier service.

Petitioners seek (1) deletion of the exceptions contained in said regulation relating to the Department of Defense, and (2) amendment thereof so as to require that the supporting statements of the Department of Defense (a) must accompany the application when it is filed at an appropriate field office, and (b) must contain a certification of its accuracy and must be signed by the person, or an authorized representative thereof, having such immediate and urgent need for motor carrier service.

Any interested person desiring to participate, shall file an original and 15 copies of written representations, views, and arguments in support of or against the petition on or before June 16, 1969.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 69-5121; Filed, Apr. 30, 1969;
8:45 a.m.]

[49 CFR Part 1307]

[Ex Parte No. MC-77]

RESTRICTIONS ON SERVICE BY MOTOR COMMON CARRIERS

Extension of Time

APRIL 25, 1969.

At the request of interested persons the time for the filing of written statements of facts, views, and arguments in the above-entitled proceeding has been extended to June 16, 1969.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 69-5224; Filed, Apr. 30, 1969;
8:51 a.m.]